

Testimony in Opposition to HB 2735
House Transportation Committee March 5, 2012
KANZA RAIL TRAILS CONSERVANCY INC.

Honorable members of the Transportation Committee:

My name is Scott Allen. I am Vice President of the Kanza Rail Trails Conservancy, Inc.

In Marshall County there is an 11.5 mile rail trail, The Blue River Trail, that runs from near Marysville to the Nebraska Border. It is being developed by Marshall County Connection (MCC).

Bill proponents have cited extensively a 2009 Court of Tax Appeals case involving this trail. [Docket No. 2010-1020-PR and 2010-1025-PR]. Please see the two attachments.

Some background on this case:

In 2009 **Marshall County assessed a value of \$10/acre on the taxpayer's property within the trail right of way.** Initially, 32 land owners adjacent to the trail protested this assessed value which amounted to a tax burden of **36¢ per acre.**

Upon protest, the Marshall County Appraiser contacted other counties with recreational trails and found that they were either exempting the land under the ROW or giving it a value of \$0.00. **Marshall County decided to follow the lead of the other counties and change the valuation of the land to \$0.00 per acre.**

All but 2 of the initial 32 adjacent landowners agreed to this \$0.00 valuation. The remaining two filed a case before the Court of Tax Appeals asking to have their land appraised as high as possible and the resulting property tax burden placed on the rail trail operator (MCC). One of the taxpayers stated under oath that if the land was valued at \$4,000 per acre then the trail operator should be responsible for the tax and if it is valued at \$0.00 the he should be responsible for the tax.

The initial tax burden placed on the two taxpayers was less than \$7.00 per year total. It was nothing after the appraiser agreed to tax the land at \$0.00.

Their case backfired. While COTA agreed that the county had erred when they appraised the land at \$0.00, **they also upheld their previous rulings that it is unconstitutional to assess property taxes on a rail trail operator.** The court determined that the land should be appraised at \$4,000 per acre and the resulting taxes should be charged to the adjacent landowner.

In their closing remarks COTA said "The findings herein are based on the limited valuation of evidence contained in the record and should not be construed as this court's endorsement or rejection of any particular appraisal methodology under similar circumstances." In other words, **this ruling applies only to the parcels of land in this particular case.**

Marshall County has no intention of changing the valuation for any other parcels within the right of way.

All counties containing recreational trail rights of way are either valuing the land at \$0.00 or exempting it from the tax rolls.

COTA also stated that without a specific statute the land under a right of way could not be exempted from the property tax rolls.

HB2375, as currently written, is unconstitutional under Article 11, Section 1 of the Kansas Constitution. In a 2008 agreed order issued by COTA it was stipulated that "[railroad] rights of way [are] not subject to taxation under Article 11, Section 1 of the Kansas Constitution and prior rulings of the Court of Tax Appeals."

We respectfully request your support for the previously presented amended bill exempting recreational trail rights of way from ad valorem taxes. It is the best solution for all.

The proposed amendment would:

NOT violate Article 11, Section 1 of the Kansas Constitution. The bill as currently written is unconstitutional.

NOT decrease the amount of property taxes collected in any counties, as all counties are currently exempting rail-trail rights of way or appraising them at \$0.00.

Give adjacent landowners the certainty of knowing that they will not be forced to pay any amount of taxes for which they are not personally responsible.


Allow volunteer rail-trail developers and donors certainty of knowing that the money raised will not be used to pay taxes but will be used to develop recreational trails for all Kansans.

Fulfill the Court of Tax Appeals requirement of a statute specifically exempting rail trail rights of way from property taxes.

Maintain things as they currently are and would be a win-win for all parties involved.

I encourage your support for this amendment.

Respectfully submitted,



Scott Allen
Vice President
Kanza Rail Trails Conservancy, Inc.